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R.N., Appellant)	
)	
and)	Docket No. 21-1178
)	Issued: January 18, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
San Antonio, TX, Employer)	
)	

Case Submitted on the Record

Before:
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

² The Board notes that, following the March 31, 2021 decision, appellant submitted additional evidence to the Board. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 5, 2020 appellant, then a 60-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2020 he injured his left hand, arm, and shoulder, as well as his lower back and neck when he was hit by a postal container (post-con), while in the performance of duty. On the reverse side of the claim form appellant's supervisor, E.R., acknowledged that appellant was injured in the performance of duty. Appellant stopped work on the date of injury.

In support of his claim, appellant submitted an undated, statement relating that on September 24, 2020 a wire cage being pulled by a tow motor driver, B.J., hit a post-con full of mail. The post-con then moved towards appellant and he put out his hand to try to protect himself and his coworker. In the process of stopping the post-con, appellant injured his hand, arm, shoulder, lower back, and neck. Two coworkers, "P." and I.C., witnessed the incident. Appellant later reported the incident to his supervisor, E.R. A September 24, 2020 witness statement from I.C. substantially accorded with appellant's account of the incident.

In a duty status report (Form CA-17) of even date, an unidentifiable emergency room healthcare provider noted appellant's history of injury and diagnosed wrist and shoulder strain. The form report indicates that appellant was examined on that date and could return to work full time on September 26, 2020.

Appellant returned to work on September 27, 2020.

In a development letter dated October 7, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence necessary to establish his claim and requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how the reported work incident caused or aggravated his medical condition. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was received.

By decision dated November 9, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted September 24, 2020 employment incident.

On November 23, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted progress notes dated November 18 and 19, 2020 from Dr. Anthony Hicks, a Board-certified physician specializing in occupational medicine. Dr. Hicks examined appellant on October 29, 2020 for cervical, trapezial, thoracic, lumbar, and left shoulder, forearm, wrist, and hand complaints. He noted that appellant's symptoms started at work on September 24, 2020 and were consistent with his regular work duties. Dr. Hicks opined, therefore, that appellant's conditions were more likely than not directly and solely related to the September 24, 2020 employment incident.

By decision dated February 3, 2021, OWCP's hearing representative affirmed the November 9, 2020 decision, as modified, finding that the medical evidence of record was

insufficient to establish a medical diagnosis in connection with the accepted September 24, 2020 employment incident. The hearing representative concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 22, 2021 appellant requested reconsideration. He noted that he was examined by Dr. Abid Kagalwalla, a Board-certified physician specializing in emergency medicine, on September 24, 2020.

OWCP subsequently received a substantially illegible medical report on March 25, 2021.

By decision dated March 31, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 24, 2020 employment incident.

In November 18 and 19, 2020 case notes, Dr. Hicks noted appellant's cervical, trapezial, thoracic, lumbar, and left shoulder, forearm, wrist, and hand complaints, but did not provide a diagnosis. The Board has held that medical reports lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship are of no probative value.¹⁰ Therefore, these reports are insufficient to meet appellant's burden of proof.¹¹

OWCP also received a September 24, 2020 Form CA-17 from an emergency room provider with an illegible signature who diagnosed wrist and shoulder strain. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹² Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See A.C.*, Docket No. 20-1510 (issued April 23, 2021); *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹¹ *See J.P.*, Docket No. 18-0349 (issued December 30, 2019); *D.D.*, 57 ECAB 734 (2006).

¹² *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁴

A request for reconsideration must be received by OWCP within one year of the date of the OWCP decision for which review is sought.¹⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).¹⁸

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of his reconsideration request under 20 C.F.R. § 10.606(b)(3). The underlying issue on reconsideration is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 24, 2020 employment incident. This is a medical issue which is addressed by relevant medical evidence not previously considered.¹⁹

With his request for reconsideration, appellant submitted an illegible medical report on March 25, 2021. The report does not constitute relevant and pertinent new evidence as the contents and diagnosis are illegible. The Board has held that the submission of evidence that does

¹⁴ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *supra* note 13; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁵ 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁶ 20 C.F.R. § 10.608(a); *see also A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

¹⁷ 20 C.F.R. § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁸ *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

¹⁹ *Y.L.*, Docket No. 20-1025 (issued November 25, 2020).

not address the particular issue involved does not constitute a basis for reopening a case.²⁰ As such, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).²¹

The Board, accordingly, finds that OWCP properly determined that appellant was not entitled to further reviews of the merits of his claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²²

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted September 24, 2020 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 3 and March 31, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 18, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ See *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECB 140 (2000).

²¹ *Supra* note 14.

²² *J.B.*, *supra* note 17; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).